Testimony of

Barbara Whipple
Barbaruolo Law Firm, PC
Latham, New York

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Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
U.S. House of Representatives

"Credit Cards and Older Americans"

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Chairwoman Maloney, Representative Gillibrand, and Members of the Subcommittee, thank you for the opportunity to appear before you today on the subject of credit cards and older Americans.

I am Barbara Whipple, an associate attorney at the Barbaruolo Law Firm, located in Latham, New York, where I practice primarily in the area of consumer bankruptcy. Prior to joining the law firm, I was a law clerk to the Honorable Robert Littlefield, United States Bankruptcy Judge for the Northern District of New York, Albany Division. I also serve as the Credit Abuse Resistance Education (CARE) liaison in the Capital Region.[1]

What I can add to the Subcommittee's examination of these issues are my experiences and those of my colleagues across the country in terms of the growing number of older consumers we are seeing in our bankruptcy practices.

The simple truth is older debtors comprise a growing proportion of our bankruptcy clients. In fact, what we have said to one another over the last several years about the increasing number of older people we are seeing has been borne out by the research. The Consumer Bankruptcy Project found that the rate at which older Americans – those

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1 The CARE outreach program began as a project of the U.S. Bankruptcy Court for the Western District of New York and has expanded nationwide. Its purpose is to provide high school and college educators easy access to local volunteer professionals who go into schools and colleges with a financial literacy program that teaches teens and young adults about the mportance of using consumer credit wisely; avoiding credit card debt; and the consequences and financial problems that result if they don't.

65 years of age and older – filed for bankruptcy increased 213 percent between 1991 and 2001.[2]

The trend of rising bankruptcies among older Americans is likely to continue for the foreseeable future, according to researchers at the Administrative Office of U.S. Courts.[3] In fact, according to this latest research, personal bankruptcy filings by people age 55 and older are growing faster than those by any other age group. In 2002, the percentage of Americans older than 45 who entered bankruptcy reached 39 percent, up from 27 percent in 1994, the study found. The steepest increase in Chapter 7 (liquidation) filings occurred among people older than age 55. Although the U.S. population as a whole is getting grayer as the baby boomer generation ages, the percent of older people seeking bankruptcy protection is rising even faster.

The primary concern is that a growing number of older Americans either are entering retirement with debt (primarily mortgage debt) that will be difficult to pay back on a fixed income or are incurring debt in their retirement years (primarily medical debt) that they will not be able to pay back. Other witnesses today have touched on what is causing older Americans to incur debt later in life, including the cost of medical care and prescription drugs, rising property rates and home maintenance costs, utilities, and other basic expenses.

The problem of rising debt among older Americans is exacerbated when it is credit card debt subject to exorbitant interest rates and a multitude of penalties and other fees. During the several years that Congress debated bankruptcy reforms, some of your colleagues described debtors seeking bankruptcy relief as "deadbeats," or "irresponsible." I can tell you that the majority of consumers I see in my bankruptcy practice are not deadbeats and do not irresponsibly ring up debt buying luxury goods or going on vacations they cannot afford. Instead, the overwhelming majority of clients I see incur debt with every intention of paying what they owe and file for bankruptcy only as a last resort.

Often, my clients file for bankruptcy only after paying back the principal they owe, plus significant sums of interest and fees, over a several year period. You have heard examples here today of older Americans trapped in debt they cannot escape because of unrelenting and mounting interest and penalty fees. In 2004, a bankruptcy court in North Carolina ordered a credit card company to itemize the claims it filed in chapter 13 bankruptcy cases. In his findings, the bankruptcy judge listed claims filed in 18 separate cases broken down as between principal and interest and fees. On average, interest and fees consisted of more than half (57%) of the total amounts listed in the claims. In one case, the card company filed a claim in the amount of $943.58, of which $199.63 was listed as principal and $743.95 was listed as interest and fees. In another

[2] Theresa Sullivan, Deborah Thorne, and Elizabeth Warren, "*Old, Young and In Between: Who Files for Bankruptcy?*" Norton Bankruptcy Law Adviser, September 2001.
[3] John Golmant and Tom Ulrich, *"Aging and Bankruptcy: The Baby Boomers Meet Up at Bankruptcy Court,"* American Bankruptcy Institute Journal, May 2007.

case, a claim of $1,011.97 consisted of $273.33 in principal and $738.64 in interest and fees.[4]

A bankruptcy case from Virginia tells another story of the impact of credit card fees and penalties on the ability of consumers to pay back that debt. During the two year period before she filed bankruptcy, a consumer made only $218.16 in new charges on her Providian Visa. After making $3,058 in payments, all of which went to pay finance charges (at the rate of 29.99%), late charges, over-limit fees, bad check fees, and phone payment fees, the balance on her account increased from $4,888 to $5,357. On her Providian Mastercard for the same period, she made only $203.06 in purchases while making $2,008 in payments. Again, all of her payments went to pay finance and other charges, and her account balance increased from $2,020.90 to $2,607.66.[5]

The scope of problem here has been well documented over the course of the hearings held by your Subcommittee, Madam Chairwoman, and by other Committees. Consider the case of the witness who testified at a Senate hearing. This Ohio resident exceeded his credit card's $3,000 limit by $200 and triggered what ended up as $7,500 in penalties and interest. After paying an average of $1,000 a year for six years, the man still owed $4,400.

I could go on and on with examples from my own practice and those of my colleagues of seniors in financial distress. They are there for different reasons – the exploding cost of health care -- including prescription drugs -- that either drains savings and/or is diverted to credit cards, necessities such as food and gas bought on credit, or outliving retirement savings and turning to credit cards to meet daily expenses. But the story is the same – a sustained effort to pay the credit card charges only to discover that it simply may not be possible given the trap of interest rates, fees and penalties.

National studies show that more households headed by retirees or those nearing retirement owe money and that the typical debt level is increasing. According to the Employee Benefit Retirement Research Institute, in 2004, 60.6 percent of families headed by someone age 55 or older owed money. In 1992, just 53 percent of similarly situated families owed money. And, the average debt level also rose, from $29,309 in 1992 to $51,791 in 2004, according to the Institute. Debt grew fastest among the poor and among families headed by someone 75 or older.[6]

My experience is that credit card debt is one of the top reasons seniors seek bankruptcy protection. The older retirees less accustomed to credit cards are more vulnerable to falling into a cycle of credit card debt, fed by rising interest rates, late fees and other penalties and fees. Older consumers who turn to me for help are embarrassed, ashamed and often do not talk to their children about their financial problems. The biggest complaint I hear is "I pay and pay every month and my debt doesn't go down,"

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[4] ***In re* Blair, No. 02-1140 (Bankr. W.D.N.C. filed Feb. 10, 2004).**
[5] *In re* McCarthy, No. 04-10493-SSM (Bankr. E.D. Va. filed July 14, 2004).
[6] Employee Benefit Research Institute, *"Debt of the Elderly and Near Elderly*, 1992-2004, available at http://www.ebri.org/pdf/notespdf/0404notes.pdf

even when I don’t make purchases. It eventually becomes evident that they may never pay off that debt due to interest rates and penalty fees.

The credit card industry has designed a system that maximizes burdensome penalties and fees while ratcheting up interest rates that can exceed 30 percent. I would encourage Congress to put an end to these abusive credit card practices that often force consumers over the “financial edge.”